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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/665,260

09/22/2003

Kiichiro Ito

P21-155424M/YS

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07/28/2006

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EXAMINER

JACKSON, ANDRE L

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/665,260

Applicant(s)

ITO, KIICHIRO

Examiner

Andre' L. Jackson

Art Unit

3677

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6 and 10-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see 13 below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


ROBERT J. SANDY
PRIMARY EXAMINER

Continuation of 13. Other: Applicant's remarks in the after final Amendment submitted July 11, 2006 are not persuasive. As to applicant's remarks pertaining to Moretz et al failing to meet every limitation of applicant's claims is found non-persuasive. Here, Moretz et al does disclose a cylinder 12 defining a guide hole or opening 18 at an end of the cylinder. There is no structural limitations that preclude the Examiner from interpreting the open end of the cylinder as a guide hole. Further, a reinforcing plate or washer 64 is attached at an end of a piston 14 along a piston stem 36 as an abutment for an end of a helical spring 62. As evidenced by figure 4, although the same reference numeral of the helical spring is used for the reinforcing plate or washer, the plate or washer illustrates a different material because the cross-hatching of the piston and piston string fall in a different orientation than that shown of the reinforcing plate or washer. Further, the Examiner believes the reinforcing plate/washer is of a harder material than the piston and piston string member because Moretz et al discloses that the piston and piston string are formed of synthetic plastic material, moreover, an alternative embodiment, the piston string is made to be flexible in comparison to the reinforcing plate/washer having a predetermined thickness greater than the piston and piston string as shown in figure 4 and is a solid rigid mass.

As to applicant's arguments pertaining to an alternative embodiment of Moretz et al failing to disclose a string member having a flat belt shape and a guide hole of the cylinder has a flat opening; a smooth arcuate face continuing to a wide width edge of the opening and the string member having the belt shape is bent and guided along the arcuate face of the guide hole is not persuasive. First, the Examiner is unaware of any special definition of the term "flat belt shape", in as much, this term is broadly interpreted as the string member 106 of Moretz et al, disclosed as a strand. A strand as interpreted by the Examiner is considered a "flat belt shape". Moreover, Moretz et al discloses a central hole 102 or guide hole which corresponds to the strand, a smooth arcuate face continuing to a wide width edge of the opening and the string member having the belt shape is bent and guided along the arcuate face of the guide hole as broadly interpreted by the Examiner. Even further, although Moretz et al does not specifically say the term "flat belt shape" in describing the string member, it is well known that a change in shape of a prior art device satisfying the structural components is considered a design choice ((change in shape) and may be rendered obvious over the prior art of record, since applicant's invention and Moretz et al string member operate similarly. Thus, for the reasoning above Moretz et al interpreted broadly, meets the limitations set forth in the claims rejected over Moretz et al.

As to applicant's remarks pertaining to the Thackston et al reference, in particular, applicant states Thackston et al fails to disclose a string member branches into a plurality of portion and connects with a piston at a base end portion and the portions come together at a forward end portion of the string member. Here, the Examiner disagrees with applicant. A broad interpretation of Thackston et al discloses a cylinder 90 formed in a tubular shape, including a guide cap 72 defining a guide hole 74b, a piston 80, which moves in the cylinder, a helical spring 40 for biasing the piston, a string member (two parallel rods 20, 30) guided from inside of the cylinder to outside of the cylinder, wherein the piston and string member are integrally molded, the string member is a plurality of portions (two parallel rods 20, 30) and connects with the piston at a base end 76 (rod 20 terminates at the base end; rod 30 connects through the base end) and the plurality of portions come together at a forward plate portion 70 within a cylindrical wall 79 of the forward plate portion (rod 20 connects through the forward plate portion; rod 30 terminates at forward plate portion). There is no structural limitations precluding the Examiner from interpreting the plate 70 as the forward end portion or is there any language in the claim that specifically says the branch portions are connected with each other as implied by applicant. Thus, for the reasoning above Thackston et al interpreted broadly, meets the limitations set forth in the claims rejected over Thackston et al.

Applicant's arguments directed to Bivens et al are not persuasive. Bivens et al discloses a strand damper comprising; a cylinder 20 formed in a tubular shape, defining a guide hole 54 at one end portion thereof; a piston 12, which moves in the cylinder; a helical spring 44 for biasing the piston toward the other end portion of the cylinder; and a string member 24 guided from inside of the cylinder to outside thereof through the guide hole, wherein; the piston and string member are integrally molded; an end cap 46 attached to other end portion of the cylinder and a reinforcing plate (disposed between disc 16 and first end 23 of string member) attached to the piston as a mount for receiving the helical spring (Fig. 3). However, Bivens et al fails to disclose that the reinforcing plate is a different material than that of the piston and string member as claimed. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the reinforcing plate to be constructed of a highly resilient material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for its intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Further, constructing a reinforcing plate of a material more rigid than the piston and string member afford increased rigidity to the overall piston while maintaining high impact strength and support when a spring constantly abuts and contacts an engagement surface of the reinforcing plate. Moreover, applicant has not stated that the choice of material or the rigidity of that material solves any relevant problem outside of what is known and considered within the level of ordinary skill in the art or is for a particular purpose and the reinforcing plate of Bivens et al operates equally as well. Thus, for the reasoning above Bivens et al interpreted broadly, renders obvious the limitations set forth in the claims rejected over Bivens et al.